

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIMARLO DONELL MCNEAL, #418323,

Petitioner,

v.

CASE NO. 2:17-CV-13437
HONORABLE PAUL D. BORMAN

SHANE JACKSON

Respondent.

**OPINION AND ORDER DENYING THE APPLICATION TO PROCEED
IN FORMA PAUPERIS, DISMISSING THE PETITION FOR A WRIT OF
HABEAS CORPUS, AND DENYING A CERTIFICATE OF APPEALABILITY**

Michigan prisoner Kimarlo Donell McNeal (Petitioner") has submitted a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis. Petitioner's certificate of prisoner institutional/trust fund account activity states that he had a current spendable account balance of \$289.47 in his prison account as of September 13, 2017 when an administrative officer of the Michigan Department of Corrections certified his financial statement. The Court concludes from the financial data that Petitioner has not established indigence and that he can pay the \$5.00 filing fee for this action. Accordingly, the Court **DENIES** Petitioner's application to proceed in forma pauperis and **DISMISSES WITHOUT PREJUDICE** his petition for a writ of habeas corpus. The Court is required to dismiss the case because the allegation of poverty is untrue. *See* 28 U.S.C. § 1915(e)(2)(A). Petitioner may submit a

new habeas petition with payment of the filing fee in a new case. This case will not be reopened.

Before Petitioner may appeal the Court's decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court's assessment of the constitutional claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a court denies relief on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *Id.* Jurists of reason would not find the Court's procedural ruling debatable. Accordingly, the Court **DENIES** a certificate of appealability. This case is closed.

IT IS SO ORDERED.

s/Paul D. Borman

Paul D. Borman

United States District Judge

Dated: October 26, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 26, 2017.

s/Deborah Tofil
Case Manager